No. 20617

FEB 14 1951 UNITED STATES COURT OF AFFEALS FOR THE NINTH CIRCUIT

J. HOWARD ARNOLD

AFFELLANT

VS.

WILLIAM J. MCGUINESS

APPELLEE

AFFELLANT'S CLOSING BRIEF

Appeal from the UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

JUN 2 2 1988 WIS F. LUCK, CLERK

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INDEX

ACTUAL BACKGROUND Page	1
IMMARY OF ARGUMENT	3
RGUMENT	4
I. Jurisdiction of the person does not continue for contempt	4
II. Jurisdiction in rem, affirmed on appeal, is unrelated to	
jurisdiction of the person in a subsequent proceeding	5
III. A Motion to Quash is proper to test jurisdiction at the star	t 6
V. Sufficiency of the affidavit should be determined before issued	1-
ance of an Order to Show Cause, not at the contempt hearing	ng 8
V. Appellee's act was not his believing erroneously he had jur	is-
diction, but his void exercise of a jurisdiction he did not	
possess, for which he could claim no judicial immunity	8
/I. Illegal acts, specifically forbidden by statute, carry no immu	
II. Ministerial acts of Appellee are also involved, and unlike	12
erroneous judicial acts carry no immunity from liability	14
VIII. Events subsequent to filing of Complaint herein are releva	nt
to request for leave to amend, if dismissal be affirmed	17
NOTIFICA	10

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6

CASES CITED

Am. School v. McAnnulty (1900) 187 U.S. 94 at 108 Page	14
Banistes v. Wakeman (1891) 64 Vt. 203, 23 Atl. 585, 15 LRA 201	16
Bank of Amer. v. Carr (1956) 138 Cal. App. 2nd 727	4
3radley v. Fisher (1871) 80 U.S. 335 at 351	11
Davis v. Burris (1938) 51 Ariz. 220, 75 Pac. 2nd 689	15
DeCourcey v. Cox (1892) 94 Cal. 665	8
DixiCola v. Coca Cola Co. (1944) 146 Fed. 2nd 43 (CA, 4th)	17
Jusy v. Helm (1881) 59 Cal. 188	10
?kumoto v. Marsh (1900) 130 Cal. 66	10
'lournoy v. Jeffersonville (1861) 17 Ind. 169, 79 Am. Dec. 468	15
'ood Handlers v. Plus Foultry (1958) 23 FRD 109 (DC, Ark.)	17
insburg v. Stern (1957) 242 Fed. 2nd 379 (CA, 3rd)	17
riffin v. Locke (1961) 286 Fed. 2nd 514 (CA, 9th)	17
rove v. Van Duyn (1882) 44 N.J. Law 654, 42 Am. Rep. 648	11
larkness v. Hyde (1918) 31 Idaho 784, 176 Pac. 885	9
lolz v. Rediske (1903) 116 Wis. 353, 92 NW 1105	9
bhnson v. MacCoy (1960) 278 Fed. 2nd 37 (CA, 9th)	12
Dnes v. Grooms (1937) 56 Ohio App. 351, 10 NE 2nd 958	9
Aptur v. Kaptur (1934) 50 Chio App. 91, 197 NE 496	9
Inhn v. McNeal (1931) 41 Chio App. 485, 181 NE 153	9
lewis v. Brautigam (1955) 227 Fed. 2nd 124, (CA, 5th)	13
Indley v. Sale (1934) 140 Cal. App. 662	13
Lind v. Sup. Ct. (1964) 61 Cal. 2nd 698	4
Linning v. Ketcham (1932) 58 Fed. 2nd 948 (CA, 6th)	9
Mitchell v. RFC-RI Corp. (1956) 148 Fed. Supp. 245 (DC, Mass.)17
Nves v. Costa (1907) 5 Cal. App. 111	9
N, In re (1962) 201 Cal. App. 2nd 728	4

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CASES CITED (continued)

orter v. Block (1946) 156 Fed. 2nd 264 (CA, 4th) Page	17
theer v. Moody (1931) 48 Fed. 2nd 327 at 330 (DC, Mont.)	15
idis v. F-R Publ. Co. (1943) 7 F R Serv. 15a24 Case 2 (DC, N.Y.)	17
eele v. Rauchfuss (1916) 15? N.Y. Supp. 193	8
illivan v. Jones (1854) 2 Gray (68 Mass.) 570	16
hler v. Sup. Ct. (1958) 61 Cal. 2nd 698	4
nited States v. Walker (1883) 109 U.S. 258 at 266	13
on Arx v. Shafer (1917) 241 Fed. 649 (CA, 9th)	14
arner v. Sup. Ct. (1954) 126 Cal. App. 2nd 821	4
leigel v. Brown (1912) 194 Fed. 652 (CA, 8th)	16
Watt v. Baker (1930) 41 Ga. App. 750, 154 SE 816	16

STATUTES CITED

Setion	416.1,	Code	of	Civil	Procedure	6,	12
etion	1211,	Code	of	Civil	Frocedure		4

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FACTUAL BACKGROUND

der the heading 'FACTS CF THE CASE' and throughout Appellee's ief, a number of non-facts and semi-facts are presented in a way ding to disparage Appellant's effort to maintain the integrity of his me and to compel the Superior Court in Alameda County to adminiser justice according to law. A factual reorientation is needed.

Appellant has appeared in his own behalf throughout this ligation by order of the Superior Court which, in defiance of Califnia and Federal law, forced him to trial pro se in the divorce
tion while permitting his wife to gay counsel from community funds.

pellant's wife is mentally ill from medically untreated menopause
addiction to psychotoxic amphetamine 'pep-pills', and incompetent
besue. She is not a 'former wife' (p.3, lines 1, 21), holding only a
midulent and void Final Decree purporting to vest title to community real property in her for her attorney's financial benefit, which
sugment the Superior Court and appellate courts refuse to vacate.

Appellant has never claimed that "at the moment he files is petition for the Creditors' Arrangement the Superior Court was a commatically' divested of all jurisdiction" (Appellee's Brief, p. 2, m. 21), but only that it would have been thus divested of jurisdiction in rem over community property -- which it never held -- by attraction of the paramount Federal court jurisdiction conferred by the Bankruptcy Act. This Court, while following the District Court of appellant from his debtor's estate or a quasi in rem order, twice as refused to decide the weightier jurisdictional question of Superior out jurisdiction in rem for transferring title to a debtor's estate.

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the divorce action proper because of the Federal proceeding.

Appellant did not "refuse to leave the family dwelling" (p.3, e 4), but for reasons of illness and lack of funds was unable to we out, and by Federal law was legally incapable of surrending a stor's estate except on order of the U.S. District Court. His wife is not "compelled to seek redress" (p.3, line 22) for any "refusal obey" Superior Court orders, "assuming that the Appellant refusto pay the child support and/or alimony" (p. 12, line 25). Appellant never refused to obey a valid order of court. All four contempt tions were brought as abuse of process, to compel him to end his sense and give up his debtor's estate.

The contempt action from which this damage suit arises can with invalid service of process on July 15, 1964, on which dat curred the hearing on Appellant's motion to vacate the void Final eree of divorce. The contempt proceeding beginning Oct. 8, 1965, at triggered by filing of Appellant's Opening Brief in his second peal to this Court over confirmation of the Creditors' Arrangement, 1 Sept. 24, 1965. In neither instance was any money owing to Mrs. rold; the purpose of the contempt proceedings was aggressive and untive, not to compel obedience to prior orders but to quiet title and prevent further litigation. As noted in the Complaint (Paragraph Clerk's Transcript, p. 2), a conspiracy involving Appellee exists and utilizes void judgments and contempt orders to defeat justice for mercenary advantage of Appellant's wife and her attorney and the afruding of Appellant and his creditors.

It is an open secret, of which this Court should take judia notice, that divorce-court judges commonly misuse their powers evard and enforce unmerited divorces for the purpose of enriching

the state that the state of the The contract of the contract o and the second to rest to the second of the the same of the sa THE OBJUST OF THE PROPERTY OF - services for the following the service of the ser かいじゅうみ 代記 10mb(** are topy)か to the 18mm of that to STATE OF THE STATE The first of the foregoing of the control of the co Established the second of the were the compact of the dame of the contract of the - in plane part selfer さいい to the case part of the case THE TO A CARE CENTER OF PERCENT AND AND AND THE CARE CARE 「一般」(1952) 中国の保証という System in the Section 1962)、Section in the Section In the S The second the second street of the second s Configure and the configuration of the configuratio graph of a constraint of the state of the st Land to the good and still the still the still the with the end design of the reservoir discount of the first of the same of the same of the same of the same of SECTION AND ADDRESS OF THE PARTY OF THE PART The strong lead to the second to the second to the to the property and the growth of the formation of and the stronger from the stronger of the control of the stronger of the stron The state of the s relations to a second self and a second to be thousand a second to the community assets. The injustice of the situation is a national scandl, especially in California and most especially in Alameda County.
The unprecedented decisions in Arnold v. Arnold and their (unpublishd) affirmance on appeal constitute an incredible perversion of judiial power, redress for some of which is sought herein.

SUMMARY OF ARGUMENT

contempt proceeding is separate from the divorce action, and must begun by service of process anew. Appellate affirmation of jurisaction in rem over community property is irrelevant. A Motion to (uash service of an order to show cause is proper at defendant's otion, to test the court's jurisdiction of his person separately from te main contempt hearing. Where the affidavit fails to allege and rovide factual support for each necessary element of a contempt, he court's jurisdiction of the subject-matter is not invoked, but is cearly and entirely absent for the particular case. Issuance of an Cder to Show Cause based on such defective affidavit is a void (not croneous) act for which judicial immunity is absent, the defect in te affidavit precluding a valid exercise of judicial discretion. Only b actually having jurisdiction, not merely presuming that he has it. on a judge avoid liability from damages for his judicial acts. For his illegal ministerial acts, such as commitment of Appellant to jail, h enjoys no immunity. Superior Court jurisdiction of the subjectmitter and of the person was never established in the particular case ad all of Appellee's judicial acts therein were wholly void, not eroneous, all jurisdiction being clearly absent because of Appellee's diregard of the affidavit's defect and of the quashing statute.

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and the property of the second transfer of the second transfer of

t continue into a contempt proceeding, which is a separate action.

Service of process on Appellant in November, 1961, gave

Superior Court a jurisdiction of his person which continues to

present time -- but for the divorce action proper, and not for the

intempt proceedings arising therefrom. It is well established that

"Contempt proceedings are separate and distinct and no part of
the original case out of which they arise."

Bank of America v. Carr (1956) 138 Cal. App. 2nd 727 Fing separate, a contempt proceeding must be initiated by service i process; a notice of motion is not sufficient.

Lund v. Sup. Ct. (1964) 61 Cal. 2nd 698 ctempt proceedings being criminal in nature,

Uhler v. Sup. Ct. (1953) 117 Cal. App. 2nd 147
etain minimal procedural safeguards are observed (though trial by
use is denied), no inferences may be made against the defendant,
in the affidavit constituting the complaint must allege with particuanty the necessary elements of a contempt, or the process is void.

Warner v. Sup. Ct. (1954) 126 Cal. App. 2 nd 821 Ny, In re (1962) 201 Cal. App. 2 nd 728

Section 1211, Code of Civil Procedure

The Crder to Show Cause served on Appellant July 15, 1964, was void

Deliuse the supporting affidavit was defective, and gave the court no

uridiction of Appellant's person for the contempt proceeding, despite

orinuing jurisdiction in personam for the divorce action proper.

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een affirmed by any appellate court in Arnold v. Arnold.

he only jurisdictional question raised and decided in Arnold v. Arnld and Arnold v. Bostick (Appellee's Brief, Appendices A and B) is
lat of Superior Court jurisdiction in rem to issue a quasi-in-rem
lection order removing Appellant from his debtor's estate in defiance
the paramount and exclusive jurisdiction in rem conferred by Conless upon the U.S. District Court as a court of bankruptcy. There
has no question of State-Federal conflict of jurisdiction in personam,
which may be exercised concurrently by both courts in the divorce
the distinction and the Arrangement proceeding. The District Court of Appeal
decision, adopted by this Court, decided (erroneously, and without an
lea of support in law or prior court decisions) that the Superior
Curt took and held an indivestible jurisdiction in rem over community property; jurisdiction in personam was not mentioned.

Appellee's Brief presumes that there is but a single jurisdition involved, which continues from divorce action to contempt proceding (pp. 4-9), when in fact there are 5 separate jurisdictions:

- 1 Jurisdiction in personain for the divorce action
- 2 Jurisdiction in personam for the contempt proceeding
- 3 Jurisdiction in rem over the community property
- (4) Jurisdiction of the subject-matter of divorce
- (5) Jurisdiction of the subject-matter of contempt.

Jurisdiction in personam is secured by service of process, jursdiction in rem by seizure of property, and jurisdiction of the

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byiously, no once-for-all-time determination can suffice to establish types of jurisdiction in 3 separate cases, each must be considered eparately, in the light of existing circumstances. An appellate court ecision of Feb. 14, 1964, in a divorce action could not predetermine at the trial court on July 15, 1964, would secure a jurisdiction of different type in a separate proceeding. Superior Court jurisdiction person and subject-matter in the divorce action is unchallenged; in jurisdiction in rem was affirmed on appeal; its jurisdiction of erson and subject-matter in the contempt proceeding is denied by appellant and has had no consideration on appeal.

III

A Motion to Quash is proper at the start of a contempt proceeding, to test the court's jurisdiction of the defendant's person.

Apellee's Brief (pp. 8-9) contends that the quashing statute, Sec.416.1, Cde of Civil Procedure, could not be used in the contempt proceeding for two reasons: (i) The contempt proceeding was not a new action, but a part of the divorce suit; (2) The issue of "jurisdiction" had been settled in the appeal of the eviction order, the Superior Court hading a continuing "jurisdiction" to enforce its orders, and an unimpressive complete "jurisdiction over both parties". It is evident that these concepts conflict with settled California law: the contempt proceeding is separate, and a newly established personal jurisdiction is needed.

Apellant had a legal right to invoke the quashing statute, although the jurisdictional insufficiency of the affidavit could be reached by lecturer in a general appearance. That the Order to Show Cause set

ate certain for the hearing (Appellee's Brief, p. 11, line 23; p. 12,

continue de la company de la contra della contra de la contra de la contra de la contra della co The state of the s The state of the s and the second s the state of the s . Novel a level religion of the later and the second The state of the second a lattice of the form the most of the many A set to a reason of the real Lab to the 1 1 2 1981 (See July 1981) 1980 (1986) 1982 (1982) 1984 (1986) (1986) (1986) (1986) (1986) (1986) (1986) (1986) (1986) (1986) (1986) (1986) (1986) (1986) (1 The state of the s The company of the state of the company of the state of t ार्थिक के प्राप्त के किया है जिल्ला है जिल्ला के किया है जिल्ला है जिल्ला के किया है जिल्ला है जिल्ला है जिल्ला and the contract of the state of the state of the state of the state of The common of the control of the con The second of th the second of th · one houses and the Lumber of the Arthurst and the second - the arm of the first traces to do the wises a set of the is able to face to an entire of the up to the terminal to an entire to is the plant of the transfer of the state of District the Country of the Country ne 17) in no way obligated Appellant to make a general appearance that time and refrain from using the Molion to Quash.

It is not true that "Appellant seeks to resist valid orders" appellee's Brief, p. 7, line 4) or "to obstruct the lawful process of e Superior Court" (p. 13, line 27) in utilizing the quashing statute. e seeks only a modicum of success in a desperate rear-guard tion of defense against a divorce court armed with void orders and issued contempt powers, determined to destroy his home and family r mercenary reasons entirely outside the law. Appellee's intent, as early demonstrated after the 1964 and 1965 illegal arrests of Appelant, was to hold the hearing as scheduled, quickly deny the motion quash, ignore the statutory 10- or 15-day continuance, and proceed amediately to the main contempt hearing.

Such denial of due process could not be challenged at the spellate level as suggested (Appellee's Brief, p. 6, line 4), and as is decretically possible. An attorney found in contempt is given a stay a permit carrying the case to the highest appellate level, if he so disires; a pro se litigant -- particularly a husband contesting a divorce dision -- is sentenced to jail "forthwith", and stay is denied. Stays were thus denied by Judge Bostick in 1963 (25-day term) and by Judge MGuiness in 1964 (3-day term). Moreover, relief by habeas corpus we denied by Judge Sweigert, and by this Court in Arnold v. Bostick it appears likely that all remedies are unavailable in practice.

Likewise, the suggestion that modification of an order is a useful method of securing relief (p. 7, line 7) is unacceptable. Appellar's defense is that no money is owing under the order, even if he wre able to pay. Had the divorce court been willing to do justice, it would have refrained from awarding a groundless divorce to his

HOLESTON THE THE STATE OF THE S all the first and the second training the second from to regard to or our horses of the transport of the angular to the same of the position of the last of the LEED TO THE PARTY OF THE PARTY the state of the s A, I'm a light of the light of and the contract of the contra and the state of t rollow to the second from the second second to the second 1200 797 (0.11) (0.11) grant of the first of the contract of the the laws of the laws of the latest the story of the latest and the law of THE SAME MODEL OF THE PARTY OF rando de la companio the party of the state of the s all and the state of the state a test of the contract of the contract of the contract of the when the state of the second state of the seco of the state of th ALTO SECURE OF A FEW PLANTS OF THE PARTY OF of the contract of the contrac TALL OF THE STATE entally ill wife, evicting him illegally from his home, giving her istody of four minor children, refusing to vacate a void Final Decee of divorce fraudulently obtained, and denying rights of creditors. Ince the purpose of these contempt actions is not to enforce valid eders, but to end litigation and consummate the plundering of Applant's debtor's estate, it is evident that modification of orders is effective as a means of avoiding contempt proceedings.

IV

ould be determined early -- before issuance of the Order, or on otion to Quash -- not at the main contempt hearing.

The suggestion that a judge's refusal to issue an Order to low Cause would be "a serious breach of ethical conduct at the ry least" (Appellee's Brief, p. 13, line 5) must be rejected as the posite of the truth. The Order is more than a Notice of Hearing; is the means of initiating a criminal prosecution, and should not issued casually or without searching judicial scrutiny of the afficient, whose sufficiency is a jurisdictional prerequisite to the Order. Apellee did not act "in the manner which the law demanded of him" [13, line 17], but based his Order on an affidavit which failed to the Order. The Order was therefore void.

".. no warrant could legally be issued upon the complaint made against the appellant... She was charged with the commission of an act which did not constitute a crime, and therefore the (magistrate) never acquired any jurisdiction to proceed in the matter, and the judgment and commitment are void on their faces."

DeCourcey v. Cox (1892) 94 Cal. 665

that there were the court of th real field date and the second of the second services to the entire that the entire the entire that the entire the entire that the entire t follow personal manual description and approximately and the second seco sont to struck at morning as a faller him of any THE REPORT OF THE PROPERTY OF THE PARTY OF T and the second of the second o The Market and the first state of the state ATT TO 1 - 1 - TALL ATT - - TAL And the Concess of the contract of the contrac aris and a second a . Program of the control of the cont ton the state of t After the company of the space of the state the second of th and to regulate the control of the second control of the control o the point of the same of the s Liver to the second of the sec THE REST OF THE PARTY AND THE world of the control perifice and a community of a fallegraph and forestern paying the self-The part will be a first through the less 200 In 1901 and a second

e affidavit must state facts showing the court's jurisdiction.

Neves v. Costa (1907) 5 Cal. App. 111
the complaint is insufficient, charging no offense, the order issued
void. and the judge issuing it is liable for damages.

Kuhn v. McNeal (1931) 41 Ohio App. 485, 181 NE 153 Kaptur v. Kaptur (1934) 50 Ohio App. 91, 197 NE 496 Steele v. Rauchfuss (1916) 157 NY Supp. 103

judge is liable for damages resulting from a contempt proceeding he lacks jurisdiction in the main action from which it arose.

Manning v. Ketcham (1932) 58 Fed. 2nd 948 (CA, 6th)

Harkness v. Hyde (1918) 31 Idaho 784, 176 Pac. 885

Holz v. Rediske (1903) 116 Wis. 353, 92 NW 1105

Jones v. Grooms (1937) 56 Ohio App. 351, 10 NE 2nd 958

the case at bar, arising from a contempt proceeding within a ger contempt proceeding, the importance of the affidavit on which latter depends for its validity is evident. It would have been to pellee's advantage to encourage a prior hearing on the motion to ash instead of discouraging it and ordering a void interim committed to jail for non-attendance at an illegal hearing.

V

the liee's act was not his erroneous believing he had jurisdiction, ut his void exercise of a jurisdiction he did not possess.

It cannot be maintained that Appellee's sole overt act "for high erroneous act there is no civil liability" (Appellee's Brief, p. it, no 5) was incorrectly believing he had jurisdiction to proceed when act he did not. Error in the exercise of an existing jurisdiction excusable; error in assuming a non-existent jurisdiction is not.

A PONTER TO THE TOTAL OF THE TO THE STATE MOSELOW IN THE STATE OF THE STATE The second of th The service of the se 202 THE REPORT OF THE RESERVE OF THE ALLEM ET LINE LAND WAS TRANSPORTED BY THE ALLEMENT OF THE PARTY OF THE throng marks, fire a pro-and the second second of the second second second second the state of the s and the second of the second o THE PROPERTY WHEN THE LAND CO. TO STAND STREET, THE PARTY OF THE PARTY The transfer of the second of "Respondent. apparently claims that where the judge assumes jurisdiction or has determined to exercise it, there can be no liability, for the reason that his judgment is but erroneous. But the court cannot confer jurisdiction by merely assuming it; nor can its determination that it has jurisdiction confer it. Where the judge has in fact no jurisdiction to act, his order of arrest is void; and whether he has jurisdiction must be determined from the affidavit itself and not from what the judge thinks it authorizes him to do."

Fkumoto v. Marsh (1900) 130 Cal. 66
short, the only way to avoid hability is to have jurisdiction. The itinction between void and erroneous judgments is elucidated by the wreme Court of California, quoting an earlier decision:

"When the proof has a legal tendency to make out a proper case, in all its parts, for issuing the process, the process will be valid until it is set aside by a direct proceeding for that purpose. In one case (the reference here is to a case where there is a total defect of evidence as to any essential fact) the Court acts without authority; in the other it only errs in judgment upon a question properly before it for adjudication. In one case there is a defect of jurisdiction; in the other, there is only an error of judgment. Want of jurisdiction makes the act void; but a mistake concerning the just weight and importance of evidence only makes the act rroneous."

Dusy v. Helm (1881) 59 Cal. 188

Efficient affidavit for a valid Order to Show Cause must contain

rolltive facts for each of the four necessary elements of a contempt.

In facts are given for one element, the affidavit is insufficient,

and the second of the second o and the state of t the first term of the contract U so il a processor a business con the CONTRACTOR OF THE RESIDENCE OF THE PARTY OF THE RESIDENCE His all real below to the control of the control of THE REPORT OF THE PARTY OF THE and the second of the second o The same two and trapper frameworks to the same specific to be a without the state of the party of the state assumption the secretary of the secretary of the second of - The state of the All and the same producting the same part of the same part and the the state of the same of the s The second secon and the second s d obviously so; no valid order can be based on it, and the judge to issues the necessarily void order is liable for damages caused. some facts are given for each necessary element of contempt, the lige may make a judicial determination of their adequacy; if he condes, erroneously, that the affidavit is sufficient, and issues the der, he does so with immunity from liability. As one leading case presses the rule,

"Where the judge is called upon by the facts before him to decide whether his authority extends over the matter, such an act is a judicial act, and such officer is not liable in a suit to the person affected by his decision, whether such decision be right or wrong But when no facts are present, or only such facts as have neither legal value nor color of legal value in the affair, then, in that event, for the magistrate to take jurisdiction is not, in any manner, the performance of a judicial act, but simply the commission of an unofficial wrong."

Grove v. Van Duyn (1882) 44 N.J.Law 654, 42 Am. Rep. 648

cisive importance also attaches to the question whether the judge

jurisdiction in the particular case and went beyond his authority,

rsimply acted when that authority had not been legally invoked.

"A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subjectmatter. When there is clearly no jurisdiction over the subjectmatter, any authority exercised is a usurped authority, and for the
exercise of such authority, when the want of jurisdiction is known
to the judge, no excuse is permissible."

Bradley v. Fisher (1971) 80 U.S. 335 at 351

Thi language appears in the opinion of this Court in the case of

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Johnson v. MacCoy (1960) 278 Fed. 2 nd 37 (CA, 9th) ited in Appellee's Brief, p. 10, and Appellant's Opening Brief, p. 5. olied to the case at bar, it means that Appellee knew, from the sence of all facts concerning one necessary element of contempt pellant's ability to comply with the support order) his jurisdiction the subject-matter of contempt had not been invoked, his Order to w Cause was void, he had no authority over the main contempt tter and no jurisdiction of Appellant's person. He should have reted the wife's affidavit as insufficient, refused to issue the Order Show Cause, and, of course, proceeded no further in the matter. ling of the Motion to Quash alerted him to the deficiency of the fdavit: Appellant's argument --repeated three times-- at the hearing ale known to Appellee that he was proceeding illegally in the clear hence of all jurisdiction of subject-matter AND person. Imposition hese circumstances of a harsh and unressonable 3-day jail sentne, and its execution 'forthwith' to prevent collateral attack, were excusable misuses of judicial power which should be redressed.

VI

pellee's refusal to honor the provisions of the quashing statute has judgment of contempt against Appellant not only void for of jurisdiction but also illegal, for the statute requires that '.. the time of the moving party to plead to the complaint shall e extended, and no default may be entered against him, ...'

Section 416.1, Code of Civil Procedure

te time to plead is extended, the hearing must be postponed by high the date originally set by the Order to Show Cause, and non-

and the second advertisers have all an about advanced in the the second of th The second positive parties of the second the first of the second of the right of the second THE RESERVE TO SERVE THE RESERVE TO SERVE TO SERVE TO SERVE THE RESERVE TO SERVE TO and are also the age of the second of the se THE WILL SERVICE BY LINEYUS TO BE A STORY OF THE SERVICE AND A STORY OF THE MI I de la company to the company of and a state of the to make the 3rd billion to produce a collection of the that are the first the control of th and their languages are compared to the compar

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default and should not be punishable as a contempt of court.

"The term 'default' is defined as the failure to perform a duty or an obligation required by law or by contract."

Lindley v. Sale (1934) 140 Cal. App. 662

default was entered against Appellant, despite statutory prohibition,

en he was adjudged in contempt for not attending the hearing orig-

ally scheduled by the Order to Show Cause.

"Although a court may have jurisdiction over the parties and the subject-matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void."

United States v. Walker (1883) 109 U.S. 258 at 266 Without jurisdiction, the judge's liability for unlawful acts is necessary no less, despite contentions of judicial privilege.

"A quasi-judicial officer...acting outside scope of his jurisdiction and without authorization of law, cannot shelter himself from liability to private citizen under Civil Rights Act by plea that he was acting under color of office."

Lewis v. Brautigam (1955) 227 Fed. 2nd 124 (CA, 5th)

"This is not a case in which Henson can claim immunity from responsibility by reason of his office of magistrate. He never acquired jurisdiction of the person of the plaintiff or the authorization to hold him in jail. Instead of obeying the plain provisions of the law, he pursued a course wholly different in nature. When he does this, he steps over the boundary of his judicial authority, and is as much out of the protection of the law in respect to the

A remain of the same of the sa The or a sense than the sense of the difference of the sense of the se The state of the same of the s " the top of the top o or consider the second of the world or your at it was a and he and the or the first time of the first ti THE OURSE TOO R. NOON TO BE STONE TO SEE STO a complete the second to the s 7/11 1 30° T,T 1 1720/3 - 11 1V 17 T 10 11/4 and the state of t statistics and the second terms of the second -91 0.5 d and 1 -91 0.5 (res) -1 10 (res) -1 10 (res) company of a sales and the sales are sales are sales and the sales are sal District of the second has the state of t the control of the co THE PERSON AT RESIDENCE OF THE PROPERTY OF THE PERSON OF T the state of the Company of the state of the the programmer of a description of the second of the secon of sec .erricle of there are the second of t through a label of the second all of London at many and to the last to the particular act, as if he held no office at all."

Von Arx v. Shafer (1917) 241 Fed. 649 (CA, 9th)

d the U.S. Supreme Court also favors redress of unlawful acts:

"The acts of all its officers must be justified by some law, and if an official violates the law to the injury of an individual the courts generally have fariadiction to grant relief. to a party aggrieved by any action. which is unauthorized by the statute under which he assumes to act. . Otherwise, the individual is left to the absolutely uncontrolled and arbitrary action of a public. . officer, whose action is unauthorized by any law and is in violation of the rights of the individual."

American School v. McAnnulty (1902) 187 U.S. 94 at 108

VII

dicial acts of Appellee are also involved, and unlike erroneous dicial acts carry no immunity from liability for damages.

Dellee's Brief limits itself to consideration of allegedly erroneous dicial action' against Appellant (p. 13, line 22), ignoring ministerial cs for which there is no immunity (Reporter's Transcript, at p. 7 of Clerk's Transcript; Appellant's Opening Brief, pp. 3, 4). Appellee's cs of issuing the Order to Show Cause and rendering the judgment of contempt were judicial, and void; his acts of issuing the bench carant and the commitment to jail were ministerial, and wrongful not the Order to Show Cause or even the judgment of contempt injured and damaged Appellant, and not the bench warrant: it the commitment to jail, an unauthorized ministerial act for which judicial immunity can be claimed, even by a judge.

The first of the second of the and controlling to the controlling to the controlling of the controlli production to the state of the that a form that are the second of the secon 1 the state of the s Commence of the second of the the state of the s on part of the first the second of the secon Contract to the contract of th there are the state of the stat the takens are not a second of the second of and the second of the second o and the second s the transfer in the same to the second to the same in the same of the same in the second secon "A 'ministerial officer' is distinguished from a 'judicial officer' as respects liability in a civil action for acts done in an official capacity, in that a 'ministerial officer' has a line of conduct marked out for him and must follow it and may be held liable for any failure to do so which results in an injury to another, while a 'judicial officer' has powers confided to him to be exercised according to his discretion and does not act in his official capacit' at his peril."

Davis v. Burris (1938) 51 Ariz. 220, 75 Pac. 2nd 689
"In absence of statutory authority, governmental officer acts at his peril and is personally liable for wrongs. . . Unless justified by some constitutional statute, a governmental officer or employee acts at his peril and personally pays for his wrongs -- a salutary principle necessary to discourage abuse of power, that official power which the great Marshall declared would be abused wherever authority was reposed."

Scheer v. Moody (1931) 48 Fed. 2nd 327 at 330 (DC, Mont.)

Misterial acts do not require the exercise of judicial discretion, but eartheless call for careful attention to their legality and correctness.

"A ministerial act may, perhaps, be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act being done. . . And the act is none the less ministeripecause the person performing it may have to satisfy himself that he state of facts exists under which it is his right and duty to perform the act. . . ."

Flournoy v. Jeffersonville (1861) 17. Ind. 169, 79 Am.Dec. 468

that the state of real dail of the same the same of the same and the common of the second was the common the second and the larger of the many of the property of the company of the c , j . ME 550 / CT . 41. (C # T) a N. F. O. C. C. and the second of the second o the contract of the state of th profession to the second of the second of the second of The state of the s The settlement of the second o 1, http://doi.org/10.1011 of theoretical and the second of the second State at the fight of the fight The state of the s The state of the s of the Mile year. I have the companies in the com-THE POPULATION OF THE PARTY OF MAR AND THE RESIDENCE OF THE PARTY OF THE PA

performed is legal and proper; if it is not, he is liable.

"In the trial and decision of the issue whether or not Brown was guilty.. and the imposition of the sentence rendered, the justice exercised his judicial powers. That judgment was within his jurisdiction and lawful. When he had rendered it, the exercise of those powers in that case ceased.. His issue of the commitment which he signed was a mere clerical or ministerial act. In its issue he exercised none of the powers of a judge... no statute..gave this justice any authority to issue this commitment... the justice... could not escape liability for the damages which the plaintiff has suffered from his unlawful act."

Weigel v. Brown (1912) 194 Fed. 652 (CA, 8th)

"..when..a final judgment has been rendered, there can remain no further judicial duty to be performed. The court or magistrate has then no longer a question upon which to deliberate. Nothing is left to be done but to carry the judgment into effect. That, under our law, is accomplished by means of an execution... the issuing of such an execution... was merely a ministerial act, and in a particular instance, where such process was issued errone-pusly, the magistrate was held responsible in damages for the commitment to prison of a party under it.. knowing at the time that the statute absolutely prohibited the imprisonment..."

Sullivan v. Jones (1854) 2 Gray (68 Mass.) 570

Wyatt v. Baker (1930) 41 Ga.App. 750, 154 SE 816

pullee's issuance of a commitment after filing of the Motion to

ush had suspended his right to do so finds an analogy in

Banistes v. Wakeman (1891) 64 Vt. 203, 23 Atl. 585, 15 LRA 201

of the out the point there is a second to the original the second the state of the s HOLENT OF REPORTS OF THE PARTY sent of the sent o to the late of the control of the co and the state of t . m manufacture to the second of the second the first time areas to the contract to the co terminal or other call the second terminal miles at a sole a sole and a sole of the s profit a fire that we want to the first of t all the property of the second The state of the s - The second of the state of the s and the state of t The second of the second of the second of ** The state of th the least of the second and the seco and the country of the property of the country of t re a mittimus issued after an appeal was taken, interrupting the sdiction of the trial court.

VIII

ents subsequent to filing of Complaint herein are relevant to reet by Appellant for leave to amend, if dismissal be affirmed.

the Opening Brief (p. 14, 15) Appellant outlined additional void acts

Appellee ocurring subsequently to the Complaint and therefore not

tained in the record on appeal. The purpose of this recital was

supply a basis for his request for this Court's leave to amend

Complaint, in the event dismissal were affirmed, and not to add

raneous argument against dismissal. The purpose of such a request

to consolidate two actions into one and thereby expedite justice,

Mitchell v. RFC-RI Corp. (1956) 148 F.Supp. 245 (DC, Mass.)

Griffin v. Locke (1967) 286 Fed. 2nd 514 (CA, 9th)

Griffin v. Locke (1961) 286 Fed. 2nd 514 (CA, 9th) tr dismissal without leave to amend, the District Court cannot now at leave while the appeal is pending,

Ginsburg v. Stern (1957) 242 Fed. 2nd 379 (CA, 3rd)

Sidis v. F-R Publ. Co. (1943) 7 F.R. Serv. 15a24, Case 2 (DC, NY.)

Less the mandate of this Court expressly permits, amendment can the made subsequent to affirmance of the dismissal.

DixiCola v. Coca Cola (1944) 146 Fed. 2nd 43 (CA, 4th)

Porter v. Block (1946) 156 Fed. 2nd 264 (CA, 4th)

Food Handlers v. Plus Poultry (1958) 23 F.R.D. 109 (DC, Ark)

Ithugh Appellant believes dismissal erroneous and trusts that the

Ispict Court decision will be reversed on appeal, he nevertheless

quests that leave to amend be granted if the decision of this Court

oud be adverse, in order to anticipate that contingency.

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CONCLUSION

ar absence of all jurisdiction of the subject-matter resulted from afficiency of the affidavit on which Appellee based his Order to w Cause, which was therefore void (not erroneous) and incapable securing jurisdiction of Appellant's person. Appellee, aware of the essity of showing ability to comply as an element of contempt, ow that the jurisdiction of his court over the subject-matter had been invoked and was entirely absent. Appellee's bench warrant judgment of contempt were likewise void, not erroneous. Appellee's mitment of Appellant to jail was an illegal ministerial act which ries no judicial immunity. Such immunity being wholly lacking, ief can be granted under the Civil Rights Act. District Court missal of the complaint was unjustified, and should be reversed.

ed: June 17, 1966.

Respectfully submitted,

Appellant, pro se

CERTIFICATE

certify that, in connection with the preparation of is brief, I have examined Rules 18 and 19 of the nted States Court of Appeals for the Ninth Circuit, and in my opinion, the foregoing brief is in full oupliance with those rules.

Appellant, pro se

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